IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5896 OF 2007

Ashok Shrirang Bhosale & ors.... Petitioner

versus

Shivaji Bhimrao Bhosale & ors..... Respondent.

Ms. Kiran Bagalia i/b. Ms. Kirti Kikil for the petitioner
Shri Dilip Bodake for respondent nos. 1 to 3.

CORAM; A.P. DESHPANDE, J.
DATED; 17TH SEPTEMBER, 2007

P.C.;

1. The present petitioners are original defendant nos. 10 to 12. They are the sons of the plaintiff. The plaintiff filed a suit for partition and separate possession. The defendant nos. 1 to 3 made counter claim by contending that the properties standing in the name of the present petitioners are joint family properties and need to be included in the common pool of joint Hindu family property. So contending, a claim for patition of the property standing in the name of the present petitioners came to be made. In this fact situation, as the trial court found that the present petitioners are supporting the plaintiff, it passed an order laying down the choronology in which the respective parties were to either cross examine or

lead evidence. It is this order which is challenged by filing the present writ petition. By the impugned order, present petitioners are directed to cross examine all witnesses first and also lead their evidence before the evidence of defendant nos. 1 to 3. The said order of leading of evidence has been passed placing reliance on a judgment of this court reported in **2004 (4) Mh.L.J. page 620.**

2. The learned counsel for the petitioner submits that the burden to establish that the properties standing in the name of the present petitioners are joint family property, would be on the defendant nos. 1 to 3 as it is the claim made in the counter claim by the said defendents. It is then submitted that having regard to the burden of proving the said fact, the present petitioners may be required to reserve its evidence touching the said issue. The said stage has yet not reached. Depending upon the issues framed and the burden casts thereunder, at an apporpriate stage the petitioner can make an application under Order 18 Rule 3, in case it proposes to reserve its evidence touching the said issue of which the burden lies on the defendant nos. 1 to 3. The trial court at that stage will consider the application in accordance with the law. With this observation, there being no merit in the petition, the same is rejected summarily.

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